Supreme Court, U.S.
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No. 02-1461

IN THE

United States Supreme Court

OCTOBER TERM, 2002

CHRISTOPHER F. SHERIDAN,

Petitioner,

vs.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Respondent.

On Petition For A Writ of Certiorari
To The Appellate Division of the Supreme Court of the State of New York,
First Judicial Department

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Appellate Division of the Supreme Court of the State of New York, First Judicial Department has held that a university *degree-holder* conferred a degree in the State of New York has no more right to have his transcript released than that of a student; that a university's refusal to forward a *degree holder's* transcript to a graduate school and certify his degree does not revoke the degree, does not violate the university's charter or the New York Education Law, and does not breach the duty of a university to honor the privileges and immunities granted to *degree-holders* by the New York State Legislature. The holding raises three substantial federal questions that warrant review by this Court:

1. Whether the state court erred in establishing a judicial revision to the statutory privileges and immunities entitlement granted by the New York State Legislature to all university *degree-holders* conferred a degree in New York, in violation of the Equal Protection or Due Process Clauses of the Fourteenth Amendment.

2. Whether Respondent Columbia University, in performing its legislatively delegated degree conferring powers, violated the *1810 Charter* of Columbia University, the Education Law of the State of New York and the Equal Protection Clause of the Fourteenth Amendment, in discriminating against Petitioner by refusing to certify to graduate schools Petitioner's lawfully conferred degree.

3. Whether the state court's decision, which cannot be reconciled with state statutes, violates the Equal Protection Clause or Due Process Clause by permitting univer-

sities to discriminate against *degree-holders* in the certification of degrees to third-party graduate schools or employers.

PARTIES TO THE PROCEEDING

The following individuals and entities were parties to the proceeding in the court below:

Christopher F. Sheridan as Plaintiff-Appellant-Respondent

The Trustees of Columbia University In The City of New York as Defendant-Respondent-Appellant

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Christopher F. Sheridan, a graduate of Columbia University who possesses a lawfully conferred degree, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department ("Appellate Division") in this case. The Court of Appeals of the State of New York denied Petitioner's motion for leave to appeal the Appellate Division's decision and order. In contravention of the Fourteenth Amendment of the Constitution of the United States, as well as the legislatively enacted *1810 Charter* of Columbia University and Article 5, Section 226(9) of the Education Law of the State of New York, the Appellate Division judicially revised New York statutes that provide that all degree-holders shall be entitled to equal privileges and immunities. The Appellate Division's decision upheld Columbia University's unlawful and unconstitutional discrimination of Petitioner in its unlawful refusal to certify his degree to graduate schools, thereby rendering Petitioner ineligible to graduate schools for the past thirteen years. Because, as one court has stated, an academic degree is *"worthy of legal protection"*, and that equal protection afforded to all degree-holders by the New York Legislature was unlawfully circumvented by Columbia University and the Appellate Division, the Petitioner's constitutional rights to equal protection and due process were violated.

OPINIONS BELOW

The Decision and Order of the Supreme Court of New York, Appellate Division, First Department ("Appellate Division"), dismissing Petitioner's Complaint in full, entered on July 2, 2002, is reported as 745 N.Y.S.2d 18, 167 Ed. Law Rep. 326, 2002 N.Y. Slip Op 05530 (App., *infra*, 1). Petitioner's Motion for Reargument to the Appellate Division, which was denied by Order of the Appellate Division, entered on October 8, 2002, was not reported (App., *infra*, 2). The Order of the New York Court of Appeals denying Petitioner's Motion for Leave to Appeal to the Court of Appeals, entered on *January 9, 2003*, was not reported (App., *infra*, 3). The order of the Supreme Court of New York dismissing Petitioner's Complaint in part, entered on January 1, 2001, was not reported (App., *infra*, 4). The Order of the Supreme Court of New York granting Respondent reargument of its motion to dismiss Petitioner's Complaint and dismissing Petitioner's Complaint in part, entered on October 4, 2001, was not reported (App., *infra*, 5).

JURISDICTION

The Decision and Order of the Appellate Division sought to be reviewed was entered on July 2, 2002. The order of the Appellate Division denying reargument and leave to appeal to the Court of Appeals was entered on October 8, 2002. The Order of the New York Court of Appeals denying Petitioner leave to appeal to the Court of Appeals was entered on *January 9, 2003*. This Petition is timely pursuant to Rule 13.1 of the Supreme Court

Rules. The jurisdiction of this Court rests upon 28 U.S.C. § 1257.

The decision of the Appellate Division dismissed Petitioner's Complaint which pled, *inter alia*, that it was, and is, unlawful for Columbia University to withhold certification of Petitioner's degree to graduate schools, since the statutory law of New York provides that *all degree-holders* are entitled to equal privileges and immunities. Certification of one's degree, through release of an official transcript, is clearly a privilege that vests with a lawfully conferred college degree. The Appellate Division, affirming the lower court's decision in part and modifying the decision in part, dismissed Petitioner's Complaint in its entirety. In dismissing the Complaint, the Appellate Division ruled on the interpretation of the legislatively enacted 1810 Charter of Columbia University ("*1810 Charter*") and the legislatively enacted Education Law, Article 5, Section 226(9) ("Education Law § 226(9)"). The judgment of the Appellate Division below is "final" for the purposes of this Court's jurisdiction under § 1257. Moreover, the decision of the Appellate Division now represents the *judicial* rule of law in the State of New York as to the interpretation of the *1810 Charter* and Education Law § 226(9), which are statutes enacted by the New York State Legislature. (See *1810 Charter* and Education Law § 226(9), *infra*; see also *McKinney's Consolidated Laws of New York Annotated, Book 16, Education Law*, 2003 Cumulative Pocket Part, § 226, Powers of Trustees of Institutions, Note 8 (Issuance of Degrees), pages 7-8.)

As more specifically demonstrated, *infra*, Petitioner raised below the express statutory provision contained in

the *1810 Charter* that prohibits Columbia from enacting any by-law or ordinance that violates the Constitution of the United States. The Appellate Division, by ruling that Respondent did not violate the *1810 Charter* or Education Law § 226(9), ruled *sub silencio* that Columbia's action did not violate Petitioner's constitutional rights and, furthermore, the Appellate Division judicially revised express legislative enactments in violation of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in relevant part, that "*no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;* ***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***" (emphasis added) **U.S. CONST. amend. XIV, 1.**

Section VII of the *1810 Charter* provides, *"And it be further enacted, that the said trustees and their successors shall have power and authority to grant all such literary honors and degrees, as are usually granted by any university, college or seminary of learning in this state, or in the United States; and in testimony of such grant to give suitable diplomas under their seal, and the signatures of the president and such professors, or tutors of the college, as they shall judge expedient,* ***which diplomas shall entitle the possessors respectively to all the immunities and privileges which either by usage or statute are***

allowed to possessors of similar diplomas from any university, college or seminary of learning". (emphasis added) *Public Laws of the State of New York passed at the Thirty-third Session of the Legislature Begun and Held at the City of Albany, January 30, 1810* (Webster's and Skinner's Public Laws of the State of New York, Volume VI (1812) (Section VII is inexplicitly duplicated in the *1810 Charter* as Section VIII).

Section IX of the *1810 Charter* provides, *"And it be further enacted, that the said trustees, and their successors, shall have full power and authority to make all ordinances and bye-laws which to them shall seem expedient for carrying into effect the designs of their institution; Provided always,* ***that such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, nor be inconsistent with the constitution and laws of this state, nor with the constitution and laws of the United States."*** (emphasis added) P*ublic Laws of the State of New York, passed at the Thirty-Third Session of the Legislature Begun and Held at the City of Albany, January 30, 1810* (Websters and Skinners Public Laws of the State of New York, Volume VI, 1812).

Article 5, Section 226(9) of the Education Law of the State of New York provides, *"Degrees and credentials. Grant such degrees and honors as are specifically authorized by their charter, and in testimony thereof give suitable certificates and diplomas under their seal;* ***and every certificate or diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any institution of***

learning." (emphasis added) *McKinney's Consolidated Laws of New York Annotated, Book 16, Education,* Article 5, Section 226(9).

Article 11 Section 2 of the New York State Constitution provides, ***"[Regents of the University]*** *The corporation created in the year one thousand seven hundred eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of the University of the State of New York.* ***It shall be governed and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised by not less than nine regents."*** (emphasis added). *McKinney's Consolidated Laws of New York Annotated, Book 2 Constitution* Article 11, Section 2, 2003 Pocket Part, page 99. (As Amended Nov. 6, 2001, eff Jan. 1. 2002.)

Article 5, Section 224(4) of the Education Law of the State of New York provides, ***"No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree or credential, nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorized institution the degree or certificate for which the letters are registered. Counterfeiting or falsely or without authority making or altering in a material respect any such credential issued under seal shall be a felony; any other violation of this section shall be a misdemeanor;*** *and any person who*

aids or abets another, or advertises or offers himself to violate the provisions of this section, shall be liable to the same penalties" (emphasis added). *McKinney's Consolidated Laws of New York Annotated, Book 16, Education*, Article 5, Section 224(4).

Article 5, Section 219(4) of the Education Law of the State of New York provides, ***"Whenever the charter or incorporation of an institute is revoked or an order of dissolution made pursuant to the provisions of this section, it shall be the duty of the trustees and/or the custodians of the permanent academic records of such institution to file the same with the state education department, or with such other agency as may be approved by said department where they shall be kept available for future reference.*** *In the event, however, that an application is made to the supreme court for an order directing the disposition of assets of such education corporation pursuant to the provisions of section two hundred twenty of this chapter and such order is thereupon made, the disposition of such permanent academic records may be directed therein. A copy of the order shall be filed with the education department by the application and such order shall so provide."* (emphasis added). *McKinney's Consolidated Laws of New York State , Book 16, Education*, Article 5, Section (219)(4).

STATEMENT OF THE CASE

I. The Underlying Litigation

Petitioner graduated from Columbia University (hereinafter "Columbia") and was lawfully conferred a B.A. degree in 1990 with all privileges and immunities as so granted by the New York State Legislature. Since 1990, Columbia has refused to release Petitioner's transcript to graduate schools until he "satisfies in full" alleged financial obligations to Columbia. Columbia bases its arbitrary and discriminatory action on a "student policy". Petitioner is currently serving on active duty in the United States Army, having enlisted in 1996 following Columbia's numerous refusals to release his transcript to graduate schools.[1] Petitioner completed his active duty in 1999, however, as a result of the recent national emergency, he has been recalled to active duty where he is currently serving with a combat unit in the Middle East.

Although Petitioner financed his education at Columbia University with federal loans and money he earned from part-time and summer employment, in 1990 Columbia's Financial Aid Office failed to process some of his federal loans and Petitioner graduated from Columbia with a portion of his school debt owed directly to Colum-

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[1] However, in 1996, after Plaintiff enlisted in the U.S. Army, Columbia released Petitioner's transcript to the Army. This arbitrary certification of Petitioner's degree, combined with Columbia's continued and arbitrary revoking of such certification, illustrates Columbia's unlawful abuse of its limited charter and statutory powers. (See Sheridan Transcript certifying his degree to the U.S. Army, App., *infra* 6)

bia.[2] Since he was conferred his degree in 1990, Petitioner has made numerous payments to Columbia and has attempted to satisfy the alleged amount owed, although he has never been given an accounting by Columbia, nor an installment payment plan. Columbia has never declared Petitioner in default of any amounts allegedly due and has never commenced an action in a court of law to recover the alleged amounts due. Petitioner made a payment of $1,600 to Columbia as recently as January 2000. This case, therefore, was never about a graduate refusing to pay for tuition or other college related fees.[3] In February 2000, after Columbia once again refused to release his transcript to Harvard Business School, Petitioner filed a Complaint alleging, *inter alia*, that Columbia was prohibited from withholding a *degree-holder's* transcript because *degree-holders* are entitled by law to equal privileges and immunities.[4] The Appellate Division modified, in part, and otherwise affirmed the New York Supreme Court's prior Orders, and dismissed Petitioner's

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[2] Petitioner was raised in a single parent family. His mother supported him and his two sisters by working for twenty-five years as an administrative worker for the New York State Department of Labor. Petitioner financed 100% of his education by working part time and with federal and state loans. It would be, therefore, fair to conclude that Petitioner comes from an economically underprivileged background.

[3] Petitioner has paid off the majority of his federal and state school loans that were independent of the amount owed directly to Respondent Columbia University. Petitioner has never declared bankruptcy.

[4] Columbia refused to release Petitioner's transcript to Fordham University School of Law in 1994 and Dartmouth Graduate Business School in 1996.

Complaint in its entirety, including Petitioner's request for a declaratory judgment declaring that Columbia is prohibited by law from withholding a *degree-holder's* transcript. By Order, dated October 8, 2002, the Appellate Division, First Department, denied Plaintiff's Motion for Reargument and Motion For Leave to Appeal to the Court of Appeals.

By order, dated January 9, 2003, the New York Court of Appeals denied Petitioner's motion for Leave to the Court of Appeals, thus exhausting all Petitioner's attempts at judicial relief in the State of New York.

II. Federal Issues Were Raised And Ruled On Below

Columbia's "policy" of withholding a *degree-holder's* transcript violates the Equal Protection Clause because the statutory law of New York mandates that all possessors of degrees *shall* be entitled to equal privileges and immunities and Petitioner was denied those privileges. Moreover, Petitioner raised before The Appellate Division the express statutory provision from the *1810 Charter*, Section IX, that prohibits Columbia from enacting any by-law, ordinance or "policy" that violates the Constitution of the United States.[5] Columbia opposed Petitioner's assertion of the constitutional issue by arguing

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[5] Section IX of the *1810 Charter* states in relevant part: ". . . *Provided always, that such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, nor be inconsistent with the constitution and laws of this State, nor with the constitution and laws of the United States*" (Sheridan Reply Brief, Pages 1-2, App. *Infra* 7).

that Columbia is a private entity and, therefore, there was no state action.[6]

The Appellate Division did not specifically rule on the constitutional issue, but ruled sub silencio that Columbia had not violated its *1810 Charter* or the Education Law. This Court has held that a state court cannot evade this Court's review by failing to discuss federal questions in its opinion. *Chapman* v. *GoodNow's Adm'r.*, 123 U.S. 540, 548 (1887). Whether or not a federal question was raised below is *"itself ultimately a federal question, as to which this Court is not bound by the decision of the state courts."* *Street* v. *New York*, 394 U.S.516, 583 (1969). Moreover, this Court has a duty to determine *"precisely the ground on which the judgment rests"*. *Black* v. *Cutter Labs.*, 351 U.S. 292, 298 (1956). In the instant case, in upholding Columbia's unconstitutional "policy", the Appellate Division actually relied on a statutory section, Section IX of the *1810 Charter*, that expressly prohibits Columbia from enacting by-laws, ordinances or "policies" that violate the Constitution of the United States.

The Appellate Division's decision, which judicially revised a statute, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution. A *degree-holder*, having been granted priv-

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[6] Columbia pled, *inter alia,*: *"Furthermore, and to the extent plaintiff suggests that a supposed violation by Columbia of the 1810 Charter is a violation of the Federal and State Constitutions, Columbia is a private university and not a "state actor" and therefore is not bound by the New York State and Federal Constitutions. See, Odom v. Columbia University, 906 F. Supp. 188, 195 (S.D.N.Y. 1995) ("Columbia, as a private institution, does not act under color of State law"); Sirohi, supra, ("defendants are not state actors")"*. (Columbia Reply Brief, page 11, App., *infra* 8)

ileges and immunities by the New York State Legislature, cannot have the degree or the privileges revoked by impermissible judicial state action, especially when as here, the state court's decision plainly departs from the legislative scheme. See *Bush* v. *Gore*, 121 S.Ct. 525, 148 L.Ed.2d 388, 69 USLW 4029 (2000). If this Court determines that to be the case, it may grant certiorari based solely on the impermissible judicial state action. See *Shelley* v. *Kraemer* 334 U.S. 1, 14, 68 S.Ct. 836, 842, 92 L.Ed. 1161, 1181 (1948), see also *New York Times Company* v. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11L.Ed.2d 686 (1964).

Reasons for Granting The Petition

Obtaining a college degree is a threshold that once crossed changes the individual from that of a student to that of degree-holder. Once the degree is conferred, there is no probationary or conditional status where the degree can be certified or revoked at will. Unlike certain state granted licenses which require the holder to renew the license, remain in good standing and pay a continuing fee, a college degree is final and unconditional. In the State of New York, a university, whether private or public, may only confer a degree through express and limited powers granted to it by the Legislature. See Education Law §226(9), *supra*; see also *1810 Charter*, *supra*. In the State of New York, the Legislature has enacted statutes that vest degree-holders with statutory protection. It is uncontested that Petitioner was conferred a lawful degree by Columbia in 1990. (See official transcript previously released to the U.S. Army, App., *infra* 6). For the past thirteen (13) years Columbia has violated Petitioner's

statutory rights and effectively revoked his degree. In doing so, Columbia not only violated its legislatively enacted charter and the Education Law of the State of New York, but also violated Petitioner's equal protection rights. By condoning Columbia's actions and departing from the statutory provisions enacted by the New York Legislature, the Appellate Division infringed on constitutional legislative authority and violated Petitioner's due process and equal protection rights.

Judge Sidney H. Ashe of the Supreme Court of the State of New York, perhaps best described the importance of a degree in the United States when he held *"[t]he academic degree is still regarded as the passport to success, wealth and happiness, the Lingua Franca on the road of social mobility in America . . . These are values which are worthy of legal protection." State by Lefkowitz* v. *Colorado State Christian College of Church of Inner Power, Inc.*, 346 N.Y.S.2d 482 (N.Y. Sup. 1973). In New York, the Legislature explicitly chose to protect the academic degree and *degree-holder* by legislative enactments that provide that a possessor of a degree *shall* hold all privileges and immunities as those held by others with identical or similar degrees. (*1810 Charter supra*; Education Law § 226(9), *supra*.) Moreover, longstanding controlling case law holds that a university degree confers a privilege. *People* v. *Geneva College*, 5 Wend. 211 (1830). Consequently, the New York State Legislature, in choosing to protect the academic degree, enacted express statutory protection so that *degree-holders* shall be entitled to equal privileges and immunities. The Legislature did not create conditions, classifications or exceptions as between degree-holders, which is readily apparent within the plain meaning of the statutes.

The refusal of a university in New York to certify a degree-holder's degree by release of the transcript clearly interferes with statutory privileges and clearly revokes the degree. Judge Haight of the U.S. District Court in the Southern District of New York held over twenty years ago, *"because of inability to pay one's debts, one is prevented from obtaining a copy of one's transcript, which leads to the inability to provide proof of previous education, which puts obstacles in the way of gaining further education and employment, which leads to an inability to keep current with one's debts."* (emphasis added). *Lee* v. *Board of Higher Education*, 1 B.R. 781, 788 (D.C.N.Y. 1979). Judge Haight concluded that the *"economic consequences of deprivation of a transcript are severe." Lee, supra* at 788. As discussed *infra*, even the Appellate Division conceded that failure to release Petitioner's transcript "compromises" Petitioner's applications to graduate schools.

Columbia's actions, clearly a state action when performing a legislatively delegated power such as conferring a degree, discriminated against Petitioner because of his economic status. The New York State Legislature made no such classification when it granted *all degree-holders* equal privileges and immunities. This Court has held that it will review classifications based on wealth and education in order to determine if the state denied a petitioner equal protection of the laws. *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed 2d 16 (1973). In the instant case, it was not the New York State Legislature that created classifications based on wealth, for it explicitly provided the reverse, it was Columbia performing its legislatively delegated powers who discriminated against the Petitioner because

of his inability to pay Columbia an alleged amount owed "in full" within an arbitrary time frame set by the Financial Aid Office of Columbia. This Court has held, in a case involving wealth classification, that *"a law nondiscriminatory on its face may be grossly discriminatory in its operation."* *Griffen* v. *Illinois*, 351 U.S. 958, 76 S. Ct. 844 (1956) at Footnote 11, citing *Guinn* v. *U.S.*, 238 U.S. 347, 355 S. CT. 956 (1915).

Justice Brandeis said for this Court many years ago that the protection of the Constitution of the United States applies *"whatever the form in which the legislative power of the state is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the state* ***exercising delegated legislative authority*** *. . ."* (emphasis added) *Standard Scale Co.* v. *Farrell*, 249 U.S. 571, 576, 39 S.Ct. 380, 382, 63 L.Ed. 780 (1919). Here, the New York State Legislature expressly granted *degree-holders* equal privileges and immunities, and Columbia and the Appellate Division, by treating Petitioner differently than other *degree-holders*, and in contradiction to an express legislative mandate, have violated the Constitution of the United States. This case goes to the very heart of a citizen's right to equal protection of the laws.

Petitioner, a Reserve Special Forces Captain in the U.S. Army, is currently deployed in an overseas combat unit with a sworn duty to defend and protect the Constitution. The irony is that he is in this position, in part, as a result of Columbia's continued violation of his constitutional and statutory rights.[7] This unlawful action by

[7] The result of Columbia's arbitrary and discriminatory policy is that it prohibits Petitioner from entering graduate school so he might

Columbia was not, and is not, *de minimus*. The consequences for Petitioner have been enormous, impacting his ability to earn a living and pursue his career, and now perhaps placing at risk the very life and liberty he enjoys. Petitioner is currently defending our political and governmental system that constitutionally permits this Court to right what is wrong, however seemingly obscure the issue and however small and inconsequential a petitioner may seem to be in comparison to a state imposing its unequal and unlawful treatment upon him.

I. The New York Statutory Scheme

Prior to the Revolutionary War, Columbia operated as King's College under a Royal Charter granted by Lieutenant Governor De Lancey on October 31, 1754. The original Royal Charter of 1754 created Governors of the College who had power to, *inter alia*, ***"give and grant any such degree and degrees to any of the students of the said College, or any other person or persons by them thought worthy thereof, as are usually granted by any or either of our universities or colleges in that part of our Kingdom of Great Britain called England"***. See *Medical Inst. of Geneva College* v. *Patterson*, 1 Denio 61, aff'd 5 Denio 618 (1845). As can be readily ascertained, the original Royal Charter of King's College *did not* grant *degree-holders* privileges and immunities.

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elevate himself to the next social and economic level, while at the same time certifying his degree to the U.S. Army, a traditional collection pool for poor and underprivileged men and women. Besides being offensive to those who believe in the American rejection of class distinctions, Columbia's actions violate statutory law and the equal protection clause.

On April 13, 1787, the New York State Legislature passed an Act ratifying and confirming the Charter of King's College and changing its name to Columbia College. The 1787 Act also modified the previously enacted 1784 Act which had created the Regents of the State University of New York. The Regents were given power to create state colleges with the same powers as Columbia. (Act of April 13, 1787, 2 R.L. 262, sec. 6 (*Laws of the State of New York, Vol. 1, 1777-1787*, Thomas Greenleaf (New York 1792).) See also *Laws of the State of New York, 1777-1784, Vol. 1*, Weed, Parson and Company, Printers (Albany 1886).[8]

In 1810, the current charter of Columbia was enacted by the New York State Legislature when it passed an Act amending the 1754 Royal Charter and repealing portions of the 1787 Act relating to Columbia. This *1810 Charter* stands today as the current charter governing Columbia University and its Trustees. This legislative enactment delegated degree-conferring powers to the Trustees of Columbia, but, for the first time, explicitly added protections for the degree-holders in Sections VII and VIII which state, in relevant part, that the ***". . . diplomas shall entitle the possessors respectively to all the immunities and privileges which either by usage or statute are allowed to possessors of similar diplomas from any uni-***

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[8] Article 11, Section 2 of the New York State Constitution provides that the Regents are governed by its coporate powers, which may be increased, modified or diminished by the Legislature. McKinney's Const. Art. 11 Section 2, *supra*; see also, *Inst. of the Metropolis* v. *Univ. of State of New York*, 289 N.Y.S. 660, aff'd 291 N.Y.S. 893, aff'd 274 N.Y. 504 (1937).

versity, college or seminary of learning". *1810 Charter, supra* at Sections VII and VIII[9].

This legislative guarantee of equal privileges and immunities to all degree-holders was an explicit change from both the 1754 Royal Charter and the 1787 Act. In 1810, the New York Legislature clearly and intentionally mandated that degree-holders shall be treated equally and no degree-holder could be denied privileges possessed by another degree-holder with a similar college degree.

The New York Legislature subsequently confirmed this mandate when it enacted the same provision in Education Law § 226(9) which applies to all colleges and universities created by the Regents of the University of the State of New York. Section 226(9) states, in relevant part, that "***. . . every certificate and diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any institution of learning***". (Education Law § 226(9), *supra* (derived from Education Law of 1910). See also *People* v. *Geneva College*, *supra*; *St. Lawrence Univ.* v. *Trustees of Theological School of St. Lawrence University*, 282 N.Y.S.2d 746 (1967). The New York statutory scheme mandating that

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[9] See *Black's Law Dictionary, Seventh Edition* (1999 West Group) at pages 668-669 *"Shall – has a duty to; More broadly, is required to . . . "* Id. See also "Entitle. 1. To grant a legal right to or qualify for." Id. at 553.

See *Black's Law Dictionary, supra*, at 1215 *"privileges" – A special right, exemption, or immunity granted to a person or class of persons; an exception to a duty."* and at page 752 – *"immunity" – Having immunity; exempt from a duty or liability."*

all *degree-holders shall* be entitled to equal privileges and immunities is longstanding, clear and unambiguous.

Since 1893, the courts in New York have respected this legislative authority by permitting colleges broad discretion as to discipline, financial matters and academic issues up to, and only *up to, the time a degree is conferred. People ex rel O'Sullivan* v. *New York Law School*, 68 Hun 118, 52 N.Y. St. Rep. 14, 22 N.Y.S. 663, 665 (1st Dept. 1893). Thus, in addition to contradicting express legislative enactments, the Appellate Division's decision deviated from prior judicial decisions that held that a degree confers a privilege and the discretionary power colleges have over students is extinguished once the degree is conferred. See *Geneva College*, *supra*; *O'Sullivan*, *supra*. This "dual-deviation" (statutory and case law) by the state court resulted in Petitioner being deprived of his due process and equal protection rights guaranteed by the Fourteenth Amendment.[10]

II. Columbia's Unlawful Actions

As discussed *supra*, Columbia's actions in granting Petitioner's degree and subsequently refusing to certify his degree to third-parties are state actions since degree-conferring power in the State of New York is a statutorily delegated power. The New York Legislature clearly delegated the degree-conferring power to Columbia in Sections VII and VIII of the *1810 Charter*, *supra*, and

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[10] See also Article 1, Section 11 of the New York State Constitution which provides, in relevant part: *"No person shall be denied the equal protection of the laws of this state or any subdivision thereof . . ." McKinney's Consolidated Laws of New York Annotated Book 2 Constitution*, Article 1, Section 11.

Education Law § 226(9), *supra*. The Education Law makes the exclusiveness of this delegated power clear in Article 5, § 224(4) of the Education Law which states in relevant part that: *"No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree. . ." McKinney's, supra*, § 224, at page 125, see *Lefkowitz, supra* at 491-493[11]. Columbia's argument below, that its actions were not state actions and therefore not subject to constitutional restrictions, is simply not sustainable.[12] Degree-conferring power was not only expressly delegated to Columbia, to the Regents and to other colleges, the power was exclusively delegated so that anyone or any organization without such delegation is expressly prohibited by law from conferring a degree.[13] Moreover, Section 219(4) of the Education Law makes it clear that, upon dissolution, the college trustees must file

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[11] These statutes confirm why every graduate school requires an official transcript as the only certification of one's lawful degree and why the release of the transcript is the *primary* privilege of the degree.

[12] The cases cited by Columbia relating to state action do not relate to degree-conferring powers or degree-holders. This Court has held that a private organization is engaging in state action when it performs legislatively delegated duties. Smith, infra.

[13] Compare this legislatively delegated power of Columbia to medical schools such as the College of Physicians and Surgeons in the City of New York and the College Physicians and Surgeons of the Western District whose original charters, unlike Columbia, gave them no power to grant diplomas, but could only recommend students for the degree of doctor of medicine to the Regents of the University of the State of New York. *People ex rel Coventry* v. *Medical Soc. of the State of New York*, 18 Wend. 539 (1836).

the "permanent academic records" (which would include transcripts) with the New York State Education Department. *McKinney's*, *supra*, § 219(4) at page 114. Thus, the transcript itself, as argued below, is a Public Record, not the property of Columbia. (Sheridan Brief, Page 24, App., *infra* 9). Consequently, by refusing to certify Petitioner's lawful degree, which is Public Record, Columbia was clearly engaging in state action.

This Court, in determining that a private organization is acting as a state actor when performing delegated duties, has held that *"[t]he party takes its character as a state agency* ***from the duties imposed upon it by state statutes;*** *the duties do not become matters of private law because they are performed by a political party"*. (emphasis added) *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944). Likewise, the New York State Legislature imposed upon Columbia, the Regents and other colleges, the exclusive duty of conferring a *lawful* degree. Consequently, the actions taken by Columbia relating to the degree and its statutory privileges are clearly those of a state actor and subject to the restraints of the Equal Protection Clause of the Fourteenth Amendment and subject to review by this Court especially when Columbia's own charter prohibits enacting any by-law, ordinance or "policy" that violates the U.S. Constitution.

As discussed *supra*, under New York statutory law, once a degree is conferred, the possessor *shall be entitled* to all privileges and immunities as possessed by others with the same degree. By discriminating against Petitioner and treating him differently from other graduates, and subjecting him to a "student policy", Columbia violated its *1810 Charter*, Education Law § 226(9) and Petition-

er's equal protection rights. As a clear reading of the statutes establish, there is no provision in the *1810 Charter* or Education Law § 226(9) that permits Columbia to control, interfere with, or strip away Petitioner's statutory privileges. While Section IX of the *1810 Charter* permits Columbia to enact by-laws or ordinances to further the "design" of the university, Section IX explicitly provides that such by-laws or ordinances *shall not* be inconsistent with, *inter alia*, the Constitution of the United States. Since the *1810 Charter* and Education Law § 226(9) mandate that *degree-holders* shall be treated equally, Columbia, by imposing a "student policy" on Petitioner and stripping him of his statutory privileges, not only violated its own charter, but violated Petitioner's equal protection rights. Moreover, this Court has held that since a legislatively chartered corporation *". . . is the mere creature of the act to which it owes its existence . . . it may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act,* ***and to be capable of exerting its faculties only in the manner which that act authorizes"***. (emphasis added) *Bank of U.S.* v. *Dandridge*, 25 U.S. 64, 68 (Mem) (1827) citing and quoting *Head & Armory* v. *The Providence Ins. Co.*, 6 U.S. 127 (Mem), 2 Cranch 127, 2 L.Ed. 229 (1804).

The *1810 Charter* authorizes Columbia to grant degrees. The *1810 Charter* mandates, however, that once granted, the possessor of the degree shall be entitled to equal privileges. There are no exceptions, no conditions and no classifications as between *degree-holders*. This Court has held that *"[t]here can be no reason for implying in a charter . . . a power which is not only not expressed, but is in direct contradiction to its express stipulations"*.

Trustees of Dartmouth College v. *Woodward*, 4 Wheat 518 (1819). Here, Columbia has implied a power which is not only absent from its charter, but is in direct contradiction to the express privileges and immunities entitlement found in Sections VII and VIII of its *1810 Charter*. If a college in New York can strip a *degree-holder* of his lawful privileges, refuse to certify his degree and *de facto* revoke his degree, then the New York Legislature's express language enacted in the *1810 Charter* and later in the Education Law means nothing. If Columbia, as a state actor when conferring and honoring degrees, can be permitted to discriminate against *degree-holders* in direct contradiction to statutory law, then those *degree-holders* who are discriminated against have no equal protection. This Court has held that the laws must be administered equally to all persons within the class so regulated. *Yick Wo* v. *Hopkins*, 6 S.Ct. 1064 (1886). Classifications applied to individuals, when the statute is clear that none have been made part of the statute, forms the very core of unequal treatment that is protected by the Equal Protection Clause of the Fourteenth Amendment. This unlawful, unconstitutional and unequal treatment of Petitioner is precisely what Columbia has engaged in for the past thirteen (13) years.

III. The State Court's Unlawful Judicial State Action

This Court held many years ago that judicial action in private disputes is a form of state action subject to application of the Equal Protection Clause of the Fourteenth Amendment. *Shelley*, *supra*; *New York Times Co.*, *supra*; see also *Barrows* v. *Jackson*, 346 U.S. 249, 735 Ct. 1031, 97 L.Ed. 1586 (1953). As recently as 2000, this Court

held that when a state court interprets a state statute and deviates from the clear statutory scheme, the Court will review the state court decision to determine if the state court has infringed on the Legislature's authority. *Bush* v. *Gore*, 121 S.Ct. 525, *supra* at 534-539 (Rehnquist, C.J. concurring). See also *Stanley* v. *Schwalby*, 16 S.Ct. 754, 764, 162 U.S. 255, 280, 40 L.Ed. 960, 960 (1896), *Fairfax* v. *Hunter*, 7 Cranch 603, 628 (1812) *Martin* v. *Hunter's Lessee*, 14 U.S. 304 (Mem) (1816). ("*In respect to powers granted to the United States, they [state judges] are not independent; they are expressly bound to obedience, by the letter of the constitution; and if they should unintentionally transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of state sovereignty.*") By condoning Columbia's actions, the Appellate Division violated Petitioner's equal protection rights. Furthermore, by judicially revising Sections VII and VIII of the *1810 Charter* and Section 226(9) of the Education Law, the Appellate Division violated Petitioner's right to due process and *expressly* violated Article 11, Section 2 of the New York State Constitution which explicitly reserves to the New York Legislature the right to increase, modify or diminish the Regents' corporate powers. See *McKinney's* Const., Art. 11, § 2 *supra*.

The Appellate Division judicially revised the *1810 Charter* and Education Law § 226(9) by affirmatively holding that there is no difference between a *degree-holder* and a student. The Appellate Division specifically held, *inter alia*, "*We reject plaintiff's argument that as a degree*

holder he is in a fundamentally different position from the plaintiffs in cases holding that a university has no legal obligation to provide a diploma or transcript to a graduating student or former student with outstanding financial obligations to the university." *Sheridan*, 745 N.Y.S.2d, *supra* at 19, App., *infra* 1, at page 38. The New York Legislature, however, did mandate that there is a "fundamental" difference between *degree-holders* and students when it granted *degree-holders* unconditional privileges and immunities once the degree is conferred. Thus, the Appellate Division's holding transcended "*the accepted bounds of statutory interpretation, to the point of being a nonjudicial act and producing new law untethered to the legislative Act in question*". *Bush*, 121 S.Ct., *supra* at 543 (Souter, J dissenting). The Appellate Division not only departed from the legislative authority, it affirmatively held that there is no difference between a *degree-holder* and a student. This holding is a direct repudiation of the statutes which provide that *degree-holders* shall be entitled to equal privileges and immunities. Not only did the Appellate Division condone Columbia's unequal treatment of Petitioner vis-a-vis other *degree-holders*, the Court went a step further and held, in direct contradiction to the statutes, that Petitioner is no different than a student.[14] The Appellate Divi-

[14] The Appellate Division cited New York case law that relates solely to students and *non-degree-holders*. That body of case law followed the *O'Sullivan* doctrine which allows colleges to discipline *students* and withhold diplomas and degrees up to, and only up to, the time a degree is conferred. To that extent, New York case law, until the *Sheridan* case, did not violate the *1810 Charter* or Education Law § 226(9) because the plaintiffs were not statutorily protected degree-holders.

sion's holding deviates so far from proper statutory interpretation "*that what it did cannot properly be called judging*". *Bush*, 121 S.Ct. *supra* at 546. (Ginsburg, J. dissenting).

The Appellate Division violated Petitioner's equal protection rights by treating him not as a *degree-holder*, but as a student (or something else), thereby repudiating statutory enactments and violating Petitioner's due process rights. In addition to violating Petitioner's rights under the Fourteenth Amendment, the Appellate Division increased the New York State Regents' corporate powers under Education Law § 226(9) in direct violation of the New York State Constitution which provides that the Regents' corporate powers may only be increased, modified or diminished by the ***Legislature***. *McKinney's* Const. Art. 11, Section 2, *supra*.

Moreover, while conceding that Columbia's policy "*may compromise plaintiff's applications to graduate schools*", the Appellate Division held that this did not revoke Petitioner's certification because he still "*possesses all of the knowledge and skills represented by the degree*". *Sheridan*, 745 N.Y.S.2d, *supra* at 19, App., *infra*, 1 at 38-39. Why then issue degrees? With the *Sheridan* holding, the Appellate Division has done away with the legal function of a degree. The Appellate Division, while conceding that Petitioner lacks the essential and inherent privilege of a degree (certification of the degree to third-parties), has created a purely fictitious privilege which permits a graduate to certify the degree to himself because he knows that he has all the knowledge and skills represented by the degree. (". . . *while the policy may compromise plaintiff's applications to gradu-*

ate schools, it does not revoke defendant's certification that plaintiff possesses all of the knowledge and skills represented by the degree." *Sheridan*, 745 N.Y.S. 2d , *supra* at 19, App., *infra*, 1 at 38-39). There is no reasonable or ordinary standard of judicial review when, as here, the Appellate Division conceded that Columbia's policy prevents Petitioner from certifying his degree to graduate schools, yet held that this "policy" does not revoke the certification of the Petitioner's degree. If Petitioner cannot certify his degree, then he has no degree and he cannot certify that he has the knowledge and skills represented by the degree. Columbia's withholding of Petitioner's transcript clearly revokes the certification as well as the degree.

The Appellate Division further violated Petitioner's constitutional rights *sub silencio* when it held that Columbia's policy of withholding Petitioner's transcript does not violate the *1810 Charter* or Education Law § 226(9) because the "policy" is expedient for carrying out Columbia's designs.[15] Remarkably, the charter provision that the Appellate Division relied on, Section IX, expressly provides that any by-law or ordinance enacted shall not be inconsistent with, *inter alia*, the Constitution of the United States or the Constitution of the State of New York. As discussed *supra*, Columbia's policy of violating Petitioner's privileges and immunities and treating him differently than other *degree-holders*, clearly violated the

[15] Even if the Appellate Division were to explain why withholding Petitioner's transcript is expedient to Columbia's designs, which the Court did not do, no such policy could violate express provisions of the 1810 Charter nor violate the United States Constitution or New York State Constitution as prohibited by Section IX of the *1810 Charter*.

statutory law and violated Petitioner's equal protection rights. Furthermore, this "policy", as adopted and sanctioned by the Appellate Division, clearly increases the corporate powers of the New York State Regents, thereby violating Article 11, Section 2 of the New York State Constitution which *explicitly* reserves to the Legislature the authority to increase or modify the Regents' powers. Columbia's "policy," therefore, violates Section IX of the *1810 Charter*, the very provision the Appellate Division relied on to circumvent Petitioner's express statutory privileges.

Finally, time-honored charter law established by this Court, and the courts of New York, holds that a by-law, ordinance, regulation or even a so-called "policy", cannot be inconsistent with the very provisions of a corporate charter. *Child* v. *Hudson's Bay Company*, 2 P. Was. 207, 209 (". . . *where the charter gives the company a power to make by-laws, they can only make them in such cases as they are enabled to do by the charter; for such power given by the charter, implies a negative that they cannot make other by-laws.*"). See also *People* v. *Manhattan Co.*, 9 Wend 351 (1832); *People* v. *Utica Ins. Co.*, 15 Johns R. 382; *Dandridge*, 25 U.S. 64, *supra*; *Head & Armory*, 6 U.S. 127, *supra*; *Trustees of Dartmouth College*, 5 Wheat 518, *supra*. See also *Johnson* v. *Hudson River R. Co.* 49 N.Y. 455 (1872). (The New York Court of Appeals held in *Johnson* that when the language of a charter "*is definite and has a precise meaning, it must be presumed to declare the intent of the legislative, and it is not allowable to go elsewhere in search of conjecture to restrict or extend the meaning.*" Id. citing *McCluskey* v. *Cromwell*, 1 Kern 593.)

Thus, besides violating the provisions of New York statutory law, the New York Constitution and the Equal Protection Clause of the Constitution of the United States, the Appellate Division's holding contradicts this Court's historical rule of law that a charter is a sacred contract and a corporation must adhere to the provisions as expressly stated in its charter. *Trustees of Dartmouth College*, 5 Wheat 518, *supra*. When statutes are not adhered to and are revised in such a way as to violate express legislative authority; when a "policy" is used to circumvent express charter provisions; and when a state court supplants itself in place of the Legislature by unconstitutionally increasing certain state powers, all of which result in extinguishing a person's lawful rights and privileges, the state court is in violation of the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

Columbia violated, and continues to violate, Petitioner's equal protection rights by its unequal treatment of him in direct contradiction to the statutory law of the State of New York. The state court, in condoning Columbia's actions and ruling in a manner that deviated from express legislative authority, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

The petition for a writ of certiorari should be granted.

Dated: New York, New York
March 17, 2003

Respectfully submitted,

JAMES H. RODGERS, ESQ.
Pro Bono Counsel of Record for Petitioner
327 Central Park West, 16-D
New York, New York 10025
(212) 825-6900

APPENDIX 1

TOM, J.P., MAZZARELLI, ROSENBERGER, ELLERIN, RUBIN, *JJ.*

1533-1534

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant-Respondent,

James H. Rodgers

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Defendant-Respondent-Appellant.

Brian K. Bernstein

Order, Supreme Court, New York County (Marilyn Shafer, J.), entered January 19, 2001, which, in an action arising out of defendant Trustees of Columbia University's refusal to forward plaintiff degree holder's college transcript to graduate schools, *inter alia*, granted defendant's motion to dismiss the complaint insofar as addressed to the causes of action for declaratory judgment, breach of contract and intentional infliction of emotional distress, and denied the motion insofar as addressed to the causes of action for fraud and negligent misrepresentation, unanimously modified, on the law, to dismiss the causes of action, fraud and negligent misrepresentation, and to declare that defendant is not in violation of either its charter or New York law by conditioning its forwarding of

plaintiff's transcript to graduate schools upon his payment of outstanding tuition, and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly. Appeal from order, same court and Justice, entered October 11, 2001, which, *inter alia*, granted defendant's motion to reargue insofar as addressed to plaintiff's claim for punitive damages under his causes of action for fraud and negligent misrepresentation, and, upon reargument, dismissed such claim, unanimously, without costs, as academic.

We reject plaintiff's argument that as a degree holder he is in a fundamentally different position from the plaintiffs in cases holding that a university has no legal obligation to provide a diploma or transcript to a graduating student or former student with outstanding financial obligations to the university (*see*, *Gray v St. John's Univ.*, __ Misc 2d __, 2001 NY Misc LEXIS 1044 [App Term, 1st Dept];*Martin v Pratt Inst.*, 278 AD2d 390 [2d Dept]; *lv denied* 96 NY2d 715; *Matter of Spas v Wharton*, 106 Misc 2d 180 [Sup Ct, Albany County]). There is no merit to plaintiff's argument that defendant's refusal to forward his transcript to graduate schools effectively revokes his degree in violation of defendant's charter, Education Law § 226(9), and an implied promise by a university to its graduates not to interfere with the privileges and immunities of his or her degree. The challenged policy is clearly "expedient for carrying into effect the designs of [defendant's] institution", as expressly permitted by its charter, and, while the policy may compromise plaintiff's applications to graduate schools, it does not revoke defendant's certification that plaintiff possesses all of the knowledge and skills represented by the degree.

Plaintiff's other causes of action all lack merit. The breach of contract claim, based on an alleged, post-degree agreement under which plaintiff gave defendant a promissory note in

exchange for defendant's promise to release his transcript, does not allege the essential terms of the note or the agreement in nonconclusory language, or plaintiff's performance of his obligations thereunder (*see*, *Matter of Sud v Sud*, 211 AD2d 423, 424). Plaintiff's claim for intentional infliction of emotional distress fails because the challenged policy does not violate defendant's charter or the law, and also because the policy is not so outrageous as to go beyond all possible bounds of decency and be utterly intolerable in a civilized community (*see*, *Wolkstein v Morgenstern*, 275 AD2d 635, 636-637). Plaintiff's fraud claim, based on an allegation that defendant misrepresented to him that it would release his transcript if he obtained a bank loan and used it to reduce his obligation to the university, should have been dismissed because plaintiff could not have been defrauded into doing what he was already legally bound to do, i.e., pay his tuition (*see*, *Megaris Furs v Gimbel Bros.*, 172 AD2d 209, 212). Plaintiff's negligent misrepresentation claim, based on the same alleged misrepresentation, should also have been dismissed, since, at the time of the alleged misrepresentation, the parties were clearly acting at arm's length (*see*, *Kimmel v Schaefer*, 89 NY2d 257, 263). We have considered and rejected plaintiff's other arguments.

M-2439 — Sheridan v. Trustees of Columbia University
Motion seeking leave to strike reply brief granted.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 2, 2002

By /s/ CATHERINE O'HAGAN WOLFE
Catherine O'Hagan Wolfe, CLERK

APPENDIX 2

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

M-4096

Index No. 103062/00

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on October 8, 2002.

Present — HON. PETER TOM, *Justice Presiding,*
ANGELA M. MAZZARELLI
ERNST H. ROSENBERGER
BETTY WEINBERG ELLERIN
ISRAEL RUBIN,
Justices.

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent-Appellant.

Plaintiff-appellant-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 2, 2002 (Appeal Nos. 1533-1534),

Now, upon a reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

By /s/ CATHERINE O'HAGAN WOLFE
Catherine O'Hagan Wolfe, Clerk.

APPENDIX 3

STATE OF NEW YORK
COURT OF APPEALS

1-14 Mo. No. 1251

At a session of the Court of Appeals Hall in the City of albany on the ninth day.of January, 2003.

Present — HON. JUDITH S. KAYE, *Chief Judge, presiding.*

CHRISTOPHER F. SHERIDAN,

Appellant,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Judge Read took no part.

By /s/ STUART M. COHEN
Stuart M. Cohen
Clerk of the Court

APPENDIX 4

SUPREME COURT OF THE STATE OF NEW YORK —
NEW YORK COUNTY

Filed January 1, 2001

Present — HON. MARILYN SHAFER
Justice

PART 36

CHRISTOPHER SHERIDAN,
Plaintiff,

—against—

TRUSTEES OF COLUMBIA UNIVERSITY,
Defendant.

INDEX NO. 103062/00
MOTION DATE _____
MOTION SEQ. NO. 02
MOTION CAL. NO. ___

The following papers, numbered 1 to 4 were read on this motion to DISMISS

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause—Affidavits—Exhibits	1
Cross-Motion—Exhibits	2
Replying Affidavits	3, 4

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that defendant's motion to dismiss the complaint and plaintiff's cross-motion to amend the complaint are partially granted, in accordance with the decision below.

Plaintiff Christopher Sheridan brings this action for declaratory relief on claims of breach of implied contract, fraud, and intentional infliction of emotional distress against defendant Columbia University.

To plead a cause of action for breach of contract, plaintiff must set forth the provisions of the contract upon which the claim is based. (*Atkinson v Mobil Oil Corp*, 205 AD2d 719.) It is undisputed that plaintiff owes unpaid tuition to the defendant. Plaintiff fails to allege the existence of any contract that would entitle plaintiff to release of his transcript prior to paying what he owes to the university. Plaintiff has failed to set forth legally cognizable grounds which would entitle him to receive his transcript while his tuition debt remains unpaid.

The cause of action for intentional infliction of emotional distress must also be dismissed. It is well settled that in order to set forth a claim, plaintiff must allege extreme and outrageous conduct which either intentionally or recklessly caused plaintiff's severe emotional distress. (*Herlihy v. Metropolitan Museum of Art*, 214 AD2d 250; *Howell v. New York Post Co., Inc.*, 81 NY2d 115.) To survive a motion to dismiss, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*Murphy v. American Home Products*, 58 NY2d 293.) While the inability to complete his application to Harvard Business School is certainly unsettling, the facts

alleged by plaintiff in the instant case do not rise to the requisite level for an emotional distress claim.

Regarding plaintiff's cross-motion to amend the complaint, it is granted only to the extent of permitting the causes of action for negligent representation and fraud, as this Court finds that plaintiff has sufficiently stated a cause of action for both in the amended complaint.

Accordingly, the action continues for plaintiff's fraud and negligent representation claims. The remaining causes of action in the complaint and proposed amendment complaint are dismissed.

Counsel are directed to appear in Part 36 for a discovery conference on Friday, 1-26-01 at 9:30 A.M.

[STAMP]
FILED JAN 19 2001
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1/01/01

By /signature stamped/ MARILYN SHAFER, J.S.C.
J.S.C.

Check one: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

APPENDIX 5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 36

Index No. 103062/00

Filed: October 11, 2001

CHRISTOPHER F. SHERIDAN,

Plaintiff,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant.

MARILYN SHAFER, J.:

Defendant the Trustees of Columbia University in the City of New York (the "University") moves: (1) pursuant to CPLR 2221, for leave to renew and reargue this court's decision and order dated January 1, 2001 (the "Prior Order"), and in the event leave is granted, to (a) dismiss the fraud and negligent representation claims that plaintiff was given leave to amend; or alternatively, to (b) dismiss the request for punitive damages asserted in the fraud and negligent misrepresentation claims, and limit the consequential damages to $1,600; and (2) pursuant to CPLR 325, for removal of this case to the Civil Court. Plaintiff Christopher F. Sheridan cross-moves, pursuant to CPLR

2221, for leave to renew and reargue the Prior Order to the extent that it dismisses plaintiff's causes of action for breach of contract, declaratory relief and intentional infliction of emotional distress.

In October 1990, plaintiff graduated from the University's School of General Studies with a Bachelor of Arts in History. Plaintiff alleges that, since receiving his degree, the University has repeatedly refused to release his transcripts to university graduate programs, including the Harvard University Graduate School of Business, in February 2000. He originally commenced this action for breach of contract, fraud and intentional infliction of emotional distress.

In the prior motion, the University moved to dismiss the complaint. Plaintiff cross-moved for leave to amend his complaint to include causes of action for a declaratory judgment and negligent misrepresentation. In the Prior Order, this court granted the University's dismissal motion, only to the extent of dismissing the claims for breach of contract, intentional infliction of emotional distress and a declaratory judgment asserted in the complaint and proposed amended complaint. Plaintiff's cross motion was granted only to the extent of granting leave to amend his claims to assert causes of action for fraud and negligent misrepresentation, finding that plaintiff sufficiently stated these claims in the proposed amended complaint.

The University now moves for leave to renew and reargue this court's Prior Order.

Although the University characterizes its motion as one for reargument and renewal, it does not submit any new evidence or additional facts not previously known to it (*Rubinstein v Goldman*, 225 AD2d 328 [1st Dept], *lv denied* 88 NY2d 815 [1996]). A motion to renew under

CPLR 2221 is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and, therefore, not brought to the court's attention (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]; *see also*, *Dankner v Szurzan and Dorf, Inc.*, 226 AD2d 669 [2d Dept 1996]). Thus, the University's motion is not for renewal.

A motion for leave to reargue, pursuant to CPLR 2221, is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended any relevant facts or misapplied any controlling principles of law (*Foley v Roche*, *supra*). The purpose of reargument is not to serve as a vehicle to permit the unsuccessful party to advance arguments different from those tendered on the original application (*id.*; *see also*, *Mariani v Dyer*, 193 AD2d 456 [1st Dept], *lv denied* 82 NY2d 658 [1993]).

The University's arguments for dismissing plaintiff's claims for fraud and negligent misrepresentation are essentially a reiteration of those made in support of its original dismissal motion. Further, the University's belated attempt to proffer different arguments from those previously made in the prior motion is not permitted under reargument (*Foley v Roche*, *supra*; *see also*, *Mariani v Dyer*, *supra*).

The University's alternate request, for leave to reargue a limitation of plaintiff's consequential damages in the fraud and negligent misrepresentation, is also denied. The University simply reiterates the prior arguments it made in opposition to plaintiff's cross motion for leave to amend, which were rejected by this court. The purpose of reargument is not to serve as a vehicle to permit the unsuccessful party to proffer the same arguments previously made in the prior motion (*Foley v Roche*, *supra*). Further, the Univer-

sity does not demonstrate that this court overlooked or misapprehended relevant facts or misapplied relevant law in allowing plaintiff leave to amend its fraud and negligent misrepresentation claims to include consequential damages (*Foley v Roche*, *supra*).

However, although this court properly granted leave to plaintiff to assert claims in fraud and negligent misrepresentation, as asserted in the proposed amended pleading, it should have dismissed the requests for punitive damages asserted therein. " 'Punitive damages are warranted where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness' " (*Lee v Health Force, Inc.*, 268 AD2d 564 [2d Dept 2000], *quoting Rey v Park View Nursing Home, Inc.*, 262 AD2d 624, 627 [2d Dept 1999]). Plaintiff's fraud and negligent misrepresentation claims, as asserted in the proposed pleading, are devoid of any factual allegations that would constitute wilful or wanton negligence, or rise to the level of moral culpability necessary to support a request for punitive damages (*see*, *id*).

Therefore, that branch of the University's motion for leave to renew and reargue is granted to the extent of granting reargument, and upon reargument, granting the motion only to the extent of modifying the Prior Order to dismiss the extent for punitive damages contained in the fraud and negligent misrepresentation claims.

In view of the foregoing discussion, that branch of the University's motion, pursuant to CPLR 325, for removal of the instant action to the Civil Court is denied. The gravamen of the University's argument relied on a limit being placed on plaintiff's damages of $1,600.

Plaintiff also cross-moved for leave to renew and reargue the Prior Order. That branch of plaintiff's cross-motion for leave to reargue the Prior Order is denied as untimely. Although plaintiff timely served his cross motion, pursuant to CPLR 2215, it was not timely under the time limitations set by CPLR 2221. A motion for leave to reargue must be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry (CPLR 2221[d][3]). Since service of the Prior Order was made on plaintiff on January 29, 2001, plaintiff's cross-motion to reargued served on March 9, 2001 is untimely.

That branch of plaintiff's cross motion for renewal is also denied. Although the 30-day time limitation under CPLR 2221[d][3] does not apply to motions to renew, the new evidence relied on by plaintiff consists of affidavits and correspondence which plaintiff acknowledges that he had prior to the dismissal motion and failed to submit (*Foley v Roche*, *supra*). Additionally, plaintiff does not provide a reasonable excuse for not previously proffering this new evidence (*see*, *Pappas v Saatchi and Saatchi Co.*, 227 AD2d 109 [1st Dept], *lv dismissed* 88 NY2d 1016, *rearg denied* 89 NY2d 862 [1996]). Renewal is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Rubinstein v Goldman*, *supra*).

Accordingly, it is

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York to reargue this court's memorandum decision and order dated January 1, 2001, is granted, and upon reargument, plaintiff's request for punitive damages, as asserted in the fraud and

negligent misrepresentation claims in the proposed Amended Complaint, is dismissed; and it is further

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York to renew this court's memorandum decision and order dated January 1, 2001 is denied; and it is further

ORDERED that the branch of the motion of the Trustees of Columbia University in the City of New York, pursuant to CPLR 325, for removal of the instant action to the Civil Court is denied; and it is further

ORDERED that the branch of the plaintiff's cross motion for leave to renew this court's memorandum decision and order dated January 1, 2001 is denied.

Dated: October 4, 2001

ENTER:

By /signature stamped/
MARILYN SHAFER J.S.C.
J. S. C.

APPENDIX 6

THE FACE OF THIS DOCUMENT CONTAINS A WATERMARK OF THE UNIVERSITY SEAL

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Christopher F. Sheridan
SSN#: 134-62-3514
SCHOOL: SCHOOL OF GENERAL STUDIES UNDERGRADUATE

DEGREE(S) AWARDED: Bachelor of arts

DATE AWARDED: October 24, 1990

MAJOR: HISTORY

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Autumn 1988		
English	F1102	College Composition II	3.00	B
Fine Arts	F1011	Introduction the Arts	3.00	A-
Philosophy	F1401	Elementary Logic	3.00	C
Spanish	F1201	Intermediate Spanish I	4.00	B+
			GPA	3.025

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Spring 1989		
English	F1124	American Literature Study	3.00	A
History	BD3052	Constitutn – Historical Perspectv	3.00	D
History	W3648	History of the South	3.00	D
Music	F1001	Introduction to Music	3.00	C
Spanish	F1202	Intermediate Spanish II	4.00	B-
			GPA	2.167
		Autumn 1989		
English	F1125	World Literature Study	3.00	B-
History	BC3056	The Amer Civil Rights Movement	3.00	B
History	W3205	Europe Politics – Socity 1870-1919	3.00	B-
History	W3227	British History, 1688-1832	3.00	B+
History	W3855	The Medieval City	4.00	D
			GPA	2.438

SUBJECT	COURSE	TITLE	POINTS	GRADE
		Spring 1990		
History	W3228	British History, 1832-1988	3.00	B+
History	W3361	History of the Soviet Union	3.00	B-
History	W3892	The Crusades	4.00	B-
History	W3934	The Immigrant and the City	4.00	C+
Phys Ed	C1002	Physical Education Activities	1.00	P
			GPA	2.714

REMARKS

Cumulative GPA: 2.559

40.00 Credits Transferred from SUNY Maritime Coll
30.00 Credits Transferred from St John's University
4.00 Credits Transferred from Suffolk County Comm Coll Ammer

This official transcript was produced on MAY 20, 1996 and released to:

SFC BUTCH BINKHAM
NJNG
NORTH EVERGREEN AVE
WOODBURY, NJ 08096 USA

[ROUND] LEGAL SEAL

/s/ JOSEPH P. CAPOBLANCO
Joseph P. Capoblanco
University Registrar

APPENDIX 7

A.

REPLY BRIEF OF PLAINTIFF-APPELLANT/ CROSS-RESPONDENT ("SHERIDAN")

I.

COLUMBIA IS PROHIBITED FROM ENACTING BY-LAWS OR ORDINANCES IN VIOLATION OF ITS 1810 CHARTER

Columbia's reliance on Section IX of the *1810 Charter* is not only misplaced, but is inconsistent with the law of New York governing interpretation of charter powers and the permissible scope of by-laws, ordinances and regulations. Moreover, Columbia did not quote Section IX in its entirety, thereby omitting a crucial component of the section necessary for interpretation. The full language of Section IX states as follows:

> "IX *And be it further enacted*, that the said trustees, and their successors, shall have full power and authority to make all ordinances and bye-laws which to them shall seem expedient for carrying into effect the designs of their institution; *Provided always*, That such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, *nor be inconsistent with the constitution and laws of this state, nor with the constitution and laws of the United States*." (emphasis added) Section IX, *1810 Charter*, *supra* at Footnote 2 of Sheridan's Appeal Brief.

Thus, when read as a whole, the by-law or ordinance 1) must be expedient for carrying out the designs of the institution and, 2) must not be inconsistent with the laws of New York State. Firstly, the revoking or restricting of a degree-holder's degree and privileges is not a power granted Columbia by the *1810 Charter* and therefore is clearly not a "design of the institution" and any by-law or ordinance that revokes or restricts a degree-holder's degree or privileges is invalid and not within the scope of Section IX. Secondly, as that part of Section IX omitted in Columbia's Response Brief clearly states: no by-law or ordinance can be inconsistent with the laws of New York State. Since the applicable law, Sections VII and VIII of the *1810 Charter*, unambiguously entitles the possessor of the degree to all privileges and immunities held by others with similar or identical degrees, and the withholding of transcripts revokes or restricts the degree and its privileges, any by-law or ordinance which has the effect of withholding transcripts of degree-holders is unlawful and in violation of Sections VII and VIII of the *1810 Charter*. Therefore, Columbia is in violation of Section IX of the *1810 Charter*, the very section Columbia relies on in an attempt to circumvent the express legislative mandate that grants the privileges and immunities entitlement to degree-holders.

APPENDIX 8

Plaintiff attempts to overcome *Spas v. Wharton*, 106 Misc. 2d 180; 431 N.Y.S.2d 638 (Sup. Ct. N.Y. Co. 1980) and *Sirohi v. The Trustees of Columbia University*, 1998 U.S. App. Lexis 22519 (2nd Cir. 1998) by claiming that each is "irrelevant". Both *Spas* and *Sirohi* are very much relevant to this case as *Spas*, cited with approval by this Court in *Gray* and by the Second Circuit in *Sirohi*, and *Sirohi* itself, endorse the mechanism of a university withholding transcripts and diplomas in order to insure the collection of outstanding tuition obligations.

Finally, plaintiff's characterization of *Spas* as "not even good law" is also mistaken as this Court only last year adopted *Spas* in its own decision in *Gray*, *supra*.

One final point is necessary. In addition to the reasons set forth in Columbia's Brief (pages 11-12), plaintiff's reliance on the 1810 Charter, *Laws of 1810*, Chap. 85, Webster's and Skinner's Law of the State of New York, 1812 Edition, is inappropriate because the provisions relied upon by plaintiff do not afford an individual a private right of action under which he may sue to obtain his relief. See generally, *Carrier v. Salvation Army*, 88 N.Y.2d 298 (1996). Furthermore, and to the extent plaintiff suggests that a supposed violation by Columbia of the *1810 Charter* is a violation of the Federal and State Constitutions, Columbia is a private university and not a "state actor" and therefore is not bound by the New York State and Federal Constitutions. See, *Odom v. Columbia University*, 906 F.Supp. 188, 195 (S.D.N.Y. 1995) ("Columbia, as a private institution, does not act under color of State law"); *Sirohi*, *supra*, ("defendants are not state actors").

"permanent academic records" of the college. Article 5, Section 219 of the *Education Law* states in paragraph 4, in part:

> "Whenever the charter or incorporation of an institution is revoked or an order of dissolution made pursuant to the provision of this section, *it shall be the duty of the trustees and/or the custodians of the permanent academic records of such institution to file the same with the state education department, or with such other agency as may be approved by said department where they shall be kept available for future reference . . .*" Id.

Thus, the New York State legislature recognizes that the permanent academic records (which would include official transcripts of graduates) are public documents that are held in trust by all universities and mandates that upon dissolution of a university or college, the trustees or custodians of the permanent academic records must file the same with the state education department. Moreover, the Court of Appeals has held that the dissolution of a private university chartered by the New York legislature must be dissolved by the Regents pursuant to Section 219 of the *Education Law*. See *St. Lawrence University*, *supra*, 282 N.Y.S.2d at p. 748. Consequently, Columbia's "permanent academic records" are, like all such college records in New York, documents that Columbia does not "own" but holds in trust for both the State of New York and the degree holder. Clearly, each graduate's official transcripts evidencing courses completed and the degree conferred are "permanent academic records" as described in Section 219 of the *Education Law*.

No. 02-1461

(2)

Supreme Court, U.S.
FILED
MAY 2 2003
OFFICE OF THE CLERK

IN THE

United States Supreme Court

OCTOBER TERM, 2002

CHRISTOPHER F. SHERIDAN,

Petitioner,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Respondent.

On Petition For A Writ of Certiorari
To The Appellate Division of the Supreme Court of the State of New York,
First Judicial Department

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

TOBACK, HYMAN & BERNSTEIN, LLP
Counsel of Record for Respondent
500 5th Avenue, Suite 1640
New York, New York 10110
212-869-2300

57 pp

ISSUES PRESENTED

1. Whether the Equal Protection and Due Process Clauses of the United States Constitution are applicable to the purely private conduct of Columbia University, a private institution and non-state actor?

2. Whether petitioner Christopher F. Sheridan (hereinafter "Petitioner") may seek certiorari of a federal question, which was not addressed or raised in the State Court proceedings?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent, The Trustees of Columbia University in the City of New York is a private not for profit corporation with no private or publicly held company owning 10% or more of its stock.

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COUNTER-STATEMENT OF THE CASE

Petitioner was an undergraduate student at The Trustees of Columbia University in the City of New York (hereinafter "Columbia University") at the School of General Studies during the period 1988 through 1990 and received his Bachelor of Arts degree in October 1990. Petitioner's education at Columbia University was funded primarily by means of financial aid and student loans[1]. At the time he graduated and received his degree, Petitioner acknowledges and admits that he had "a continuing balance owed to Columbia University in the amount of $22,706.16"[2]. Separate and apart from the outstanding tuition that Petitioner admits owing to Columbia University, Petitioner remains in default of a certain promissory note between Columbia University as lender and Petitioner as borrower, dated October 31, 1989 in the face amount of $3,000 (the "Promissory Note"). The relevant student bulletins in effect during Petitioner's association with Columbia University (the "Student Bulletin"), provide in pertinent part:

> It is the policy of the University to withhold registration, privileges, diplomas, certificates and transcripts until all financial obligations have been met.

Similarly, the express terms of the Promissory Note executed by the Petitioner provided, in relevant part, "if I [Sheridan] fail to fulfill any of my obligations described in this [Promissory] Note, Columbia University may with-

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[1] Although not relevant to the Application, the Petition contains facts allegedly pertaining to Petitioner's family members or their employment history, which are not contained in the Record.

[2] Appellate Division Record at page 54, paragraph 5 provided at Appendix A, page 2a.

hold any rights and privileges to which I may otherwise be entitled, including registration for study and receipts of diplomas and transcripts"[3]. Based upon the express provisions of the Student Bulletin and Promissory Note, and based further upon Petitioner's unpaid (and admitted) financial obligations owing to Columbia University, Columbia University exercised its right to withhold Petitioner's transcript.

Petitioner filed a Complaint alleging, *inter alia*, that Columbia University was prohibited from withholding his transcript and the Appellate Division, First Department modified, in part, and otherwise affirmed New York Supreme Court's prior Orders and dismissed Petitioner's Complaint in its entirety. See *Sheridan v. Columbia University*, 745 N.Y.S.2d 18, 2002 N.Y. Slip. Op. 05530 (1st Dep't 2002)[4]. By Order dated October 8, 2002, the Appellate Division, First Department, denied plaintiff's motion for re-argument and motion for leave to appeal to the New York Court of Appeals[5].

By Order dated January 9, 2003, the New York Court of Appeals denied Petitioner's Motion for Leave to Appeal to the Court of Appeals[6].

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[3] Appellate Division Record at page 50, paragraph 6 provided at Appendix B, page 6a.

[4] A copy of the Appellate Division, First Department's Decision and Order entered July 2, 2002 is provided with the Petition, App. 1, pages 1a - 4a.

[5] A copy of the Appellate Division, First Department's Order entered October 8, 2002 is provided with the Petition, App. 2, pages 4a - 5a.

[6] A copy of the Court of Appeals' Order entered January 9, 2003 is provided with the Petition, App. 3, page 6a.

SUMMARY OF THE ARGUMENT

Petitioner's application for a Writ of Certiorari must be denied because: (a) the federal constitutional issues asserted by Petitioner herein were not raised, or addressed, in the State Court proceedings and (b) Petitioner's Due Process and Equal Protection claims, raised here for the first time, are not implicated for purely private conduct—Columbia University is a private institution and not a "state actor".

REASONS FOR DENYING THE WRIT

A. NO FEDERAL QUESTION WAS TIMELY OR PROPERLY RAISED BY PETITIONER IN THE STATE COURT PROCEEDINGS

Petitioner's application for a Writ of Certiorari must be denied because the federal constitutional issues raised in his Petition were not raised below or preserved for appellate review. *Street v. New York*, 394 U.S. 576 (1969); *Adams v. Robertson*, 520 U.S. 83 (1997).

This Court has long held that its jurisdiction to re-examine the final judgment of a State court can only arise if the Record as a whole shows that the federal claim was adequately presented in the State's system. *Webb v. Webb*, 451 U.S. 493 (1981). This Court has consistently refused to decide purported federal constitutional issues raised here for the first time on review of State court decisions. *Id.* When the highest State court is silent on a federal question before this Court, it is assumed that the issue was not properly presented and the aggrieved party bears the burden of

defeating this assumption—a burden that Petitioner has failed to sustain. See *Adams*, 520 U.S. at 87.

This principle has been codified in this Court's Rule § 14(1)(g)(i), which states, with respect to the contents of a Petition for Writ of Certiorari, that it shall contain the following:

> (i) If review of the state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific references to the places in the record where the matter appears . . . , so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

Rules of the Supreme Court of the United States, Rule 14(1)(g)(i).

The Petition herein does not and cannot comply with this Rule because, despite the initial proceeding in the court of first instance and three appeals to the State appellate courts, the Record fails to disclose any Due Process or Equal Protection claims raised or framed by Petitioner. In fact, in all the appellate briefs filed below by Petitioner, no reference or citation is made to the Fourteenth Amendment or United States Constitution. Moreover, in all of the State Court appeals, the statements of questions presented do not address or refer to the Fourteenth Amendment or the

United States Constitution; and as such, the Petitioner failed to timely and properly raise any federal question that this Court could review[7]. Essentially, Petitioner seeks to have this Court review and interpret the New York State Education Law and Columbia University's charter, each of which raise questions purely of state law not properly subject to review before this Court. *Webb*, 451 U.S. at 494[8].

B. COLUMBIA UNIVERSITY IS NOT A STATE ACTOR AND ITS ACTIONS INVOLVE MERELY PRIVATE CONDUCT

Petitioner's application for a Writ must also be rejected for a further separate and distinct reason. Columbia University is a private institution and is not a "state actor". As this Court stated in *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982),

> [S]ince this Court's decision in the Civil Rights Cases, 109 U.S. 3 (1883), "the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth

[7] The Table of Contents, Table of Authorities and Statements of Questions Presented sections of Petitioner's briefs filed below are provided herein at Appendices C, D, E and F, respectively.

[8] Petitioner's argument concerning improper judicial state action is similarly unavailing because it rests on a fundamental flaw—*to wit*, that Petitioner's suggested distinction between a degree holder, graduate and student is correct. The Appellate Division expressly rejected this argument and now Petitioner claims that the Appellate Division's reading of the state statute has created an infringement of Petitioner's constitutional rights. The application by the state court of the state rule of law does not offend or even implicate the Fourteenth Amendment and Petitioner cannot be entitled to this Court's review merely because the Appellate Division did not accept his interpretation.

> Amendment is only such action as may fairly be said to be that of the States." *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948). "That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."

The ultimate issue in determining whether a person may be subject to suit under the Fourteenth Amendment is whether the alleged infringement of federal rights is fairly attributable to the State. *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982). As we show below, Columbia University's act of withholding the Petitioner's transcript on the basis of his admitted outstanding tuition debt owed to Columbia University is not attributable to the State, and consequently, Petitioner's constitutional claim must necessarily fail.

In *Blum* and *Rendell-Baker* this Court held that "a State normally can be held responsible for a private decision ***only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State***." *Rendell-Baker*, 457 U. S. at 840 (emphasis added). In this case, Petitioner attempts to argue that Columbia University should be considered a "state actor" because the State, via New York State Education Law § 224(4), granted to all "regularly organized institutions of learning" the power to confer a degree upon individuals "meeting all requirements of law and of the university"[9] and further because New York State Education Law § 219(4) requires that college trustees, upon dissolution of a college or university, file the permanent academic

[9] Petition, pages 20-21.

records with the New York State Department of Education[10]. These examples of State delegated authority or regulation neither amount to the State's exercise of coercive power over Columbia University nor do they demonstrate a sufficiently close nexus between the State and Columbia University so that Columbia University's action of withholding Petitioner's transcript may be fairly treated as that of the State. *Rendell-Baker*, 457 U.S. at 840; *Blum*, 457 U.S. at 1004.

This Court has chosen not to recognize a private entity to be a "state actor" in far more heavily government controlled or regulated instances including *Blum*, *supra*, (extensively State regulated private nursing home held not a "state actor"); *Rendell-Baker*, *supra*, (private educational institution funded by State public funds and regulated by State held not a "state actor"); *Polk County v. Dodson*, 454 U.S. 312 (1981) (State Public Defender held not a "state actor"); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972) (private club subject to Pennsylvania Liquor Control Board regulation held not a "state actor"). See also, *Albert v. Carovano*, 851 F.2d 561 (2d Cir. 1988) (private college's disciplinary actions, even though in compliance with State statute "cannot be state action"); *Rothman v. Emory University*, 828 F. Supp. 537 (N.D.Ill. 1993). (dismissed claim because private college is not a "state actor"); *Smith v. Duquesene University*, 612 F. Supp. 72 (W.D.P.A. 1985), *aff'd.*, 787 F.2d 583 (3rd Cir. 1986) (dismissed State action claim against private university).

Most recently, the District Court for the Southern District of New York held that Columbia University is a

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[10] *Id.*

private institution and not a state actor. *Odom v. Columbia University*, 906 F. Supp. 188 (S.D.N.Y. 1995) ("Furthermore, such claim, even if alleged, could not survive a motion to dismiss because Columbia, as a private institution, does not act under color of state law").

Accepting Petitioner's argument that Columbia University must be considered an arm of the State because it is authorized by the State legislature to confer a degree upon its graduates, would necessarily broaden and extend the "state actor" characterization to all private colleges, private universities, and other private and parochial schools that are legislatively authorized to confer a degree or issue a diploma. Such a premise, urged here by Petitioner for the first time, is both wrong and contradicts this Court's century old interpretations of "state action" and the Fourteenth Amendment.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that this Court deny the Petition.

Dated: New York, New York
May 2, 2003

Respectfully submitted,

TOBACK, HYMAN & BERNSTEIN LLP
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Jerry A. Weiss
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APPENDIX A

NEW YORK SUPREME COURT
COUNTY OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiffs

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendants.

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE

JAMES H. RODGERS, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under the penalties for perjury as follows:

1. I am the attorney for plaintiff herein in the above captioned action. As such, I am fully familiar with the circumstances in this action.

2. I submit this Affirmation with exhibits in support of SHERIDAN's Order to Show Cause and request for emer-

gency relief pursuant to CPLR § 6311 and 6313 seeking an order compelling The Trustees of Columbia University of the City of New York (hereinafter "COLUMBIA") to release SHERIDAN's college transcript to Harvard University Graduate School of Business, and for such other and further relief as this Court may deem just and proper.

3. This matter is an action by plaintiff SHERIDAN for a declaratory judgment declaring that it is unlawful for COLUMBIA to withhold his transcript from graduate schools and directing COLUMBIA to release the transcript to Harvard University Graduate School of Business, and to recover as yet unspecified money damages for breach of contract and/or promise, fraud and for intentional infliction of emotional distress as a result of COLUMBIA withholding plaintiff's transcript for the past ten years after awarding him a degree. (See summons and complaint attached hereto as Exhibit A). The relief requested in this Order to Show Cause is a result of COLUMBIA's refusal on February 9, 2000 to release SHERIDAN's transcript. (See COLUMBIA's refusal attached hereto as Exhibit B).

4. On or about October 24, 1990, COLUMBIA awarded SHERIDAN a degree. (See unofficial copy of transcript attached hereto as Exhibit C) This degree was unconditional and with the degree came all honors, privileges and immunities as afforded under the laws of the State of New York.

5. Mr. Sheridan has a continuing balance owed to COLUMBIA in the amount of $22, 706.16 for student loans. SHERIDAN has not been declared in default by COLUMBIA of those loans and entered into a re-financing arrangement with COLUMBIA in December 1999 when he made a lump

sum payment of $1,600.00. (See COLUMBIA invoice attached hereto as Exhibit D).

6. Subsequent to the granting of the degree in 1990, COLUMBIA continued to press SHERIDAN for payment of said monies. SHERIDAN attempted to make payments whenever he could and at no time did he express any intention in defaulting on that obligation. Numerous times since 1990, COLUMBIA has refused to release SHERIDAN's transcripts to university graduate programs. As a result, SHERIDAN was unable to be eligible for any graduate programs in any field during that time. In 1996, SHERIDAN applied further relief as this court deems just and proper.

Dated: New York, New York
February 18, 2000

By /s/ JAMES H. RODGERS
JAMES H. RODGERS

APPENDIX B

COLUMBIA UNIVERSITY
STUDENT LOAN PROMISSORY NOTE

Columbia University in the City of New York
Student Loan Section
Office of the Bursar
210 Kent Hall
New York, New York 10027

I, SHERIDAN, CHRISTOPHER F., promise to pay to Columbia University in accordance with the terms of this Note the amount of

$ 3,000, which has been lent to me, plus interest and penalty charges as provided below, together with all attorney's fees (which shall be not less than 25% of the amount then due) and other costs necessary for the collection of any amount not paid when due.

I further understand and agree:

1. LOAN FUND. The loan represented by this Note was disbursed from the

GILBERT Fund. If disbursed from the Gilbert Fund, the loan is referred to as a "Gilbert Fund Loan."

2. INTEREST. Interest shall accrue from the beginning of the repayment period specified in paragraph 3 at the ANNUAL PERCENTAGE RATE OF NINE PERCENT (9%) on the unpaid balance, except that no interest shall accrue during any period described in paragraph 4.

3. PAYMENTS. The principal amount of this Note shall be repaid, with interest, in equal monthly installments during a repayment period beginning the first day of the sixth calendar month following the date I cease to be eligible for a deferment as provided in sections (a) or (b) of paragraph 4. In the event that I shall become entitled to a deferment as provided in paragraph 4 after the repayment period has begun, the repayment period shall resume on the date my entitlement to a deferment shall cease. Commencing one month following the beginning of the repayment period, principal payments shall be made in 120 equal monthly installments on the first day of each month, together with interest on the outstanding balance, except that if repayment in 120 installments would result in payments, including interest, of less than $30 per month, payments shall be at the rate of $30 per month, which shall include principal and interest.

4. DEFERMENT. Interest will not accrue, and installments need not be paid, (a) during periods in which I am enrolled at Columbia University (including for this purpose Barnard College and Teachers College) as a full-time student (or, if this is a Gilbert Fund Loan, as at least a half-time student), (b) during periods totaling no more than four years during which I am enrolled at an accredited institution of higher education other than Columbia University as a full-time student (or, if this is a Gilbert Fund Loan, as a least a half-time student), (c) during periods totaling no more than three years during which I am on full-time active duty in the United States Armed Forces, or (d) during periods totaling no more than three years during which I am in service as a Volunteer under the Peace Corps Act or VISTA Volunteer under Title I, Part A, of the Domestic Volunteer Service Act. For the purposes of the

preceding sentence, enrollment in a summer session at any institution shall not be included unless I am also enrolled in such institution in the immediately preceding spring session or the immediately following autumn session. Columbia University will determine on the basis of proof submitted by me whether or not I have met any of the requirements for deferment of payment enumerated in this paragraph.

5. PREPAYMENT. I may at any time without penalty prepay all or any part of the principal of this Note, plus the accrued interest thereon. If I repay more than the amount due in any month, the excess will be used to repay principal unless I designate it as an advance payment of the next installment.

6. DEFAULT. If I fail to make any scheduled payment under this Note by its due date, the entire unpaid indebtedness, including interest due and accrued, plus any applicable penalty charges, will at the option of Columbia University become immediately due and payable. If I fail to fulfill any of my obligations described in this Note, Columbia University may withhold any rights and privileges to which I may otherwise be entitled, including registration for study and receipt of diplomas and transcripts.

7. PENALTIES. If I fail to make any scheduled payment under this Note by its due date, I agree to pay a late charge of $1.00 for the first month or part of a month by which the payment is late and $2.00 for each month or part of a month thereafter.

8. CHANGE OF ADDRESS. I will notify the Student Loan Section at the address at the top of this Note each time my address changes. I authorize all individuals and agencies,

including schools that I have attended and will attend, and motor vehicle departments of all states in which I have received or will receive driver's licenses, to give Columbia University information about my address.

9. CANCELLATION. If I die or become permanently and totally disabled, this Note will be cancelled. Disability will be determined by Columbia University on the basis of such medical or other examinations as the University may prescribe.

10. CREDIT AGENCIES. I authorize Columbia University to request information about me from credit agencies, and to give credit agencies information about my receipt of the loan represented by this Note and about my repayment of that loan.

11. WAIVER. In consideration of the loan represented by this Note and the grace period and deferment privileges granted in this Note, I expressly waive, in all jurisdictions, the defense of the statute of limitations and all other defenses arising out of any lack of diligence by Columbia University in enforcing any of its rights under this Note.

I hereby acknowledge receipt of a completed copy of this Note.

/s/ Christopher F. Sheridan
Signature of Borrower

_____
Print name of Comaker

/s/ [ILLEGIBLE] Lane
Permanent Address

_____
Comaker's Signature

Remsenburg, NY 11460

_____
Comaker's Address

10/31, 19 89
Date Signed

_____

A Comaker is required if the borrower is neither a citizen nor a permanent resident of the United States. A Comaker's signature must be notarized below.

State of _____)
) ss.:
County of _____)

On this ___ day of _____ 19__ before me personally came

_____

who, being duly sworn, did depose and say that (s)he subscribed to the above instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____

Notary Public

APPENDIX C

COURT OF APPEALS
STATE OF NEW YORK

New York County Clerk's Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ.
Attorney Pro Bono
for Plaintiff-Appellant/Cross-Respondent
327 Central Park West, 16-D
New York, New York 10025
212-825-6900

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COURT OF APPEALS
STATE OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affirmation of James H. Rodgers, Esq., dated November 8, 2002, the Decision and Order of the Appellate Division, First Department, entered on or about July 2, 2002, and served by regular mail with Notice of Entry on July 3, 2002, and the Decision and Order of the Appellate Division, First Department, entered on or about October 8, 2002, and served by regular mail with Notice of Entry on *October 17, 2002*, denying reargument or leave to appeal to the Court of Appeals, the Briefs and Record on Appeal filed herein and all prior proceedings herein, Plaintiff-Appellant/Cross-

Respondent CHRISTOPHER F. SHERIDAN will move this Court, at the Court of Appeals, Court of Appeals Hall, 20 Eagle Street, Albany, New York, on the *25th day of November, 2002*, for an order granting Plaintiff-Appellant/Cross-Respondent leave to appeal to the Court of Appeals pursuant to CPLR § 5602(a)(1) from the Order of the Appellate Division, First Department entered on July 2, 2002, which modified in part and otherwise affirmed the Order of the Supreme Court, New York County.

Dated: New York, New York
November 8, 2002

JAMES H. RODGERS, ESQ.

By /s/ JAMES H. RODGERS

JAMES H. RODGERS
Attorney *pro bono* for Plaintiff-Appellant/Cross-Respondent
CHRISTOPHER F. SHERIDAN
327 Central Park West #16-D
New York, New York 10025
(212) 825-6900

TO: Brian K. Bernstein, Esq.
TOBACK, HYMAN AND BERNSTEIN
Attorneys for Defendant-Respondent/Cross-Appellant
THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
500 Fifth Avenue, Suite 1640
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COURT OF APPEALS
STATE OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant

AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ., an attorney admitted to practice law before the Courts of the State of New York, affirms the following statements under the penalties of perjury:

I am the attorney *pro bono* for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan (hereinafter "Plaintiff") in the above-captioned matter and submit this affirmation in support of Plaintiff's Motion for Leave to Appeal to the Court of Appeals on the following issues of law.

QUESTIONS PRESENTED

(1) Does Education Law, Article 5, § 226(9) and the 1810 Charter of Columbia University vest degree-holders with equal, unconditional, and irrevocable privileges and immunities?

(2) Is the certification of a degree-holder's degree, through the release of the official transcript, a privilege which all degree-holders are equally entitled to?

(3) Is the refusal of a university to release the transcript of a degree-holder who has been conferred a university degree pursuant to Education Law, Article 5, § 226(9) or pursuant to a legislatively enacted charter, a violation of the laws of the State of New York?

(4) Is the refusal of a university to release a degree-holder's transcript to graduate schools or any other entity, an unlawful revocation of the degree which violates the privileges and immunities entitlement contained in Education Law Article 5, § 226(9)?

(5) Is the refusal of a Columbia University to release the transcript of a degree-holder to graduate schools or any other entity, an unlawful revocation of the degree which violates the privileges and immunities entitlement contained in Sections VII and VIII of the 1810 Charter of Columbia University?

(6) Does the refusal of a chartered university to release the transcript of a degree-holder breach

the implied sacred contract between a chartered university and its graduates requiring the university to honor the provisions of its charter, specifically the privileges and immunities granted to the possessor of the degree?

PROCEDURAL HISTORY

Plaintiff moves for leave to appeal to the Court of Appeals from the Order of The Appellate Division, First Department, entered July 2, 2002 (attached as Exhibit "A" is a copy of the Order with Notice of Entry, dated July 3, 2002) which modified, in part, and otherwise affirmed the Orders of Justice Marilyn Shafer of the Supreme Court, New York County, which granted in part, Defendant-Respondent/Cross-Appellant's (hereinafter "Columbia") motion to

To Be Argued By:
James H. Rodgers

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

New York County Clerk's Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

BRIEF FOR PLAINTIFF-APPELLANT/ CROSS-RESPONDENT

JAMES H. RODGERS, ESQ.
Attorney for Plaintiff-Appellant/
Cross-Respondent
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212-825-6900

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PRELIMINARY STATEMENT

Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan ("Sheridan") appeals from the Order of Hon. Marilyn Shafer, Justice of the Supreme Court, dated January 1, 2001, dismissing Sheridan's causes of action in breach of contract, intentional infliction of emotional distress, and request for declaratory relief for an order that a University is prohibited from withholding the college transcripts of a *degree holder* (alumnus). (R8-9) Columbia cross-appeals the January 1, 2001 Order. The request for a declaratory judgment involves a case of first instance in the State of New York. In addition, Sheridan appeals from Hon. Marilyn Shafer's Order dated October 4, 2001 dismissing Sheridan's demand for punitive damages for his causes of action in fraud and negligent misrepresentation, causes of action which survived both Defendant-Respondent/Cross-Appellant's ("Columbia") CPLR § 3211 motion to dismiss and its subsequent motion for reargument. (R14-21) The appeals have been consolidated and perfected together with one brief and Joint Record.

QUESTIONS PRESENTED

I. Is the withholding of a *degree-holder's* transcripts by a university prohibited by the law of New York and in violation of public policy? (case of first instance)

Answer: The Court below dismissed Sheridan's request for a declaratory judgment, but the Court failed to declare the rights of the parties on this issue and failed to declare the law of the State of New York.

II. Is there an implied contract that exists between a university and a *degree-holder* that requires the university to honor the degree and its vested privileges including the release of transcripts? (case of first instance)

Answer: The Court dismissed Sheridan's implied contract claim holding that Sheridan failed to plead a contract entitling him to the release of his transcripts, but failed to declare the rights of the parties on this issue.

III. Did Sheridan sufficiently plead his causes of action for declaratory relief, implied contract, express contract (1996 agreement) and intentional infliction of emotional distress?

Answer: The Court held that Sheridan did not plead a cause of action in contract entitling him to the release of the transcripts, that his alleged intentional infliction of emotional distress did not meet the standard necessary to sustain such an action, and dismissed his request for a declaratory judgment without declaring what the law is in the State of New York and without declaring the rights of the parties.

IV. Are Sheridan's claims for fraud and negligent misrepresentation sufficient to sustain a claim for punitive damages?

Answer: The Court, on reargument by Columbia, held that Sheridan's allegations of fraud and negligent misrepresentation did not reach the necessary threshold for punitive damages.

FACTS

Sheridan graduated from Columbia University and was conferred a B.A. degree in History in 1990. (R68) Sheridan financed his education entirely on his own by way of student loans and money he earned during the summer months. Throughout his academic career at Columbia he obtained state and federal loans which were administered by Columbia's

To Be Argued By:
JAMES H. RODGERS

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

New York County Clerk's Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

REPLY BRIEF FOR PLAINTIFF-APPELLANT/ CROSS-RESPONDENT

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NEW YORK SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

NOTICE OF MOTION FOR REARGUMENT OR IN ALTERNATIVE FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affirmation of James H. Rodgers, Esq., dated July 25, 2002, attorneys for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan will move this Court at the Appellate Division Courthouse, 27 Madison Avenue, New York, New York, on August 12, 2002 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order permitting reargument, or, in the alternative, granting leave to appeal to the Court of Appeals, pursuant to Sections 600.14(a) and 600.14(b)

of the Rules of Court, First Department, and pursuant to CPLR § 5602(a) and § 5713, upon the questions of law set forth in the supporting Affirmation, from the Order of this Court entered on July 2, 2002, which modified and affirmed the Orders of the Supreme Court, New York County (Marilyn Shafer, J.) entered on January 1, 2001 and October 16, 2001, dismissing Plaintiff-Appellant/Cross-Respondent's Amended Complaint, and for such other and further relief as the Court deems just and proper.

PLEASE FURTHER TAKE NOTICE that pursuant to CPLR § 2214(b), any answering papers must be served seven (7) days before the return date of this motion.

Dated: New York, New York
July 25, 2002

JAMES H. RODGERS, ESQ.

By /s/ JAMES H. RODGERS

JAMES H. RODGERS
Attorney for Plaintiff-Appellant/
Cross-Respondent
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TO: CLERK, SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT
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New York, New York 10010

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NEW YORK SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

AFFIRMATION IN SUPPORT OF MOTION FOR REARGUMENT OR ALTERNATIVELY FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ., an attorney admitted to practice law before the Courts of the State of New York, affirms the following statements under the penalties of perjury:

1. I am the attorney for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan (hereinafter "Plaintiff") in the above-captioned matter. I submit this affirmation in support of Plaintiff's motion for reargument, or in the alternative for leave to appeal to the Court of Appeals from the Order of this Court, entered July 2, 2002

(attached as Exhibit "A" is a copy of the Order with Notice of Entry, dated July 3, 2002) which modified and affirmed the Orders of Justice Marilyn Shafer of the Supreme Court, New York County, which granted, Defendant-Respondent/ Cross-Appellant's motion to dismiss Plaintiff's Amended Complaint. I am fully familiar with the facts and circumstances surrounding the underlying action and the appeal.

2. Plaintiff graduated from Columbia University and was conferred a degree in 1990. Since 1990, Defendant-Respondent/Cross-Appellant Columbia University ("Columbia") has refused to release Plaintiff's transcripts to graduate schools until he satisfies *in full* alleged financial obligations to Columbia. Plaintiff is currently serving on active duty in the United States Army. This Court modified, in part, and affirmed the below Court's prior Orders dismissing Plaintiff's Amended Complaint in its entirety, including Plaintiff's request for a declaratory judgment declaring that Columbia is prohibited from withholding a *degree-holder's* transcripts. This Court's Decision and Order, entered July 2, 2002, is a final determination.

3. Plaintiff by this application seeks reargument of the Decision and Order of the Supreme Court, Appellate Division, First Department relating to the declaratory judgment, on the following grounds:

a. The controlling case law, as cited by this Court in its Decision and Order of July 2, 2002, only permits a college or university to withhold transcripts of students or non-degree-holders and this Court's Decision and Order specifically extends the current law to add a new category of persons, *degree-holders*, not previously included within the parameters of prevailing controlling case law cited by this

Court. (See *Grey*, *infra*, *Martin*, *infra* and *Spas*, *infra*.) Plaintiff respectfully submits that this Court's Decision and Order, creating a new legal precedent, cites no case law in support of extending the current controlling case law which clearly only applies to students and those who have not been conferred a degree. Moreover, this Court's Decision extends for the first time the general rule of law found in *O'Sullivan*, *infra*, which only permits a university discretionary power over a student up to the time of graduation. It is respectfully submitted that the Court's extension of a university's power to include withholding transcripts of degree-holders was an error of law.

b. Plaintiff cited statutory law, the *1810 Charter* of Columbia University and Education Law § 226(9), that clearly supports the position that the controlling case law as to students cannot be extended to degree-holders who are entitled to privileges and immunities not similarly possessed by students or non-degree-holders. Thus, this Court's extension of the controlling case law to include degree-holders is in direct contravention to statutory law which protects degree-holders from *any* action by a university that would diminish a degree-holder's privileges. It is respectfully submitted that this Court's failure to distinguish degree-holders' rights from those of students was an error of law.

c. This Court's finding that the refusal to forward Plaintiff's transcripts does not revoke his degree in violation of Education Law 226(9) and the *1810 Charter* because the challenged policy is expedient

for carrying out the designs of the institution, is in direct contravention to the controlling law of New York governing charter interpretation as clearly set forth in *Child* v. *Hudson's Bay Company*, *infra*; *People* v. *Utica Ins. Co.*, *infra*; *Beatty* v. *Marine Ins. Co.*, *infra* and *People* v. *Manhattan Company*, *infra*, which cases hold that a chartered organization cannot enact by-laws, ordinances, regulations or "policies" that are inconsistent with the provisions of its charter. In addition, the very charter provision that this Court relied on, Section IX, specifically prohibits Columbia from enacting by-laws or ordinances inconsistent with the laws of New York. It is respectfully submitted that this Court's sanctioning of Columbia's transcript withholding policy as it relates to degree-holders, which violates the provisions of Columbia's *1810 Charter*, was an error of law.

d. This Court's Decision and Order agreed with Plaintiff that Columbia's policy compromises Plaintiff's applications to graduate schools, yet further held that this does not "revoke" Columbia's certification that Plaintiff possesses the knowledge and skills presented by the degree. Plaintiff respectfully submits that this finding is inconsistent since if this Court agrees that Plaintiff cannot obtain a benefit of his degree, certification of his degree to graduate schools, then this Court must conclude, as a matter of law, that Plaintiff does not enjoy the same privileges as those with similar degrees whose transcripts are released. Thus, Columbia has revoked Plaintiff's privileges (and

degree) and Columbia remains in violation of its *1810 Charter*, since, if Columbia does not release Plaintiff's transcripts, there is no certification. Plaintiff respectfully submits that this Court's refusal to declare that the withholding of Plaintiff's transcripts revoked his degree, was an error of law and the issue should be reconsidered.

4. Plaintiff submits that the foregoing issues merit reargument because if this Court has decided to set new precedent and extend university power over students, as first set forth in *People ex re O'Sullivan* v. *New York Law School*, 68 Hun. 118, 52